

TITLE 18
FIRES
CHAPTER 18-01
FIRE MARSHAL DEPARTMENT

18-01-01. Appointment of fire marshal - Appointment and salaries of deputies and assistants - Budget. The attorney general shall appoint the state fire marshal and supervise the operation of the state fire marshal department. The state fire marshal shall manage the fire marshal department and shall perform the duties imposed on the state fire marshal by this chapter.

The state fire marshal shall appoint such deputies and other employees as the state fire marshal deems necessary to carry out this chapter within the limits of legislative appropriations.

Before entering upon their duties, the state fire marshal and each deputy appointed under this section shall take and subscribe the constitutional oath of office and file the oath in the office of the secretary of state.

The fire marshal department must be operated in conjunction with the bureau of criminal investigation. The budget for the fire marshal department must be submitted as part of the attorney general's budget.

18-01-02. Duties of state fire marshal and deputy state fire marshals. The state fire marshal and deputy state fire marshals may enforce all the laws of the state providing for:

1. The prevention of fires.
2. The storage, sale, and use of combustibles and explosives.
3. The installation and maintenance of automatic or other fire alarms and fire extinguishing equipment.
4. The means and adequacy of exits in case of fires from all public and private elementary and secondary schools, from all public places, and from all other places in which fifty or more persons congregate from time to time for any purpose.
5. The suppression of arson and the investigation of the cause and origin of fires.
6. The education of the citizens of North Dakota through organized programs on the hazards of fire.

18-01-03. Deputy fire marshal to assist fire marshal - Duties when fire marshal absent. Each deputy fire marshal shall assist the state fire marshal, and in the event of a vacancy in the office of state fire marshal, or during the absence or disability of that officer, the chief deputy fire marshal shall assume the duties of the office of state fire marshal.

18-01-03.1. Inspections - Department of human services. The fire marshal and the fire marshal's deputies may perform fire safety inspections of those facilities required to be inspected under administrative rules of the department of human services. The fire marshal shall charge a fee not to exceed fifty dollars for conducting these fire safety inspections in an amount determined by administrative rules adopted by the fire marshal. Inspection fees received by the fire marshal must be deposited into the attorney general's operating fund.

18-01-03.2. Delegation of authority. The state fire marshal may delegate to the state department of health or any political subdivision the authority to conduct investigations, surveys, or inspections, and the authority to enforce compliance where violations are discovered, which become the responsibility of the state department of health or political subdivision and otherwise

would be the responsibility of the fire marshal. Any delegation to the state department of health is limited to authority over basic care facilities. Any political subdivision that meets the fire marshal's minimum standard requirements may be delegated authority under this section. A political subdivision may refuse the delegation.

18-01-04. Rules for prevention of fires to be issued. The state fire marshal, under the supervision of the attorney general, shall make rules not inconsistent with the provisions of this code for the prevention of fires and shall explain such rules fully to all state, county, and municipal boards and officers. All such rules must be posted in such conspicuous places as will tend to be of the greatest benefit to the residents of the state, and when called upon, the state fire marshal or one of the state fire marshal's assistants shall appear before any public board and explain the benefits derived from compliance with such rules and regulations in the reduction of hazardous conditions and loss by fire.

18-01-04.1. Educational programs - Provided by fire marshal. The state fire marshal has the authority to provide educational programs on the hazards of fire.

18-01-05. Insurance companies to report fire losses to state fire marshal. Each insurer authorized to transact fire insurance business in this state is hereby required to report to the state fire marshal, either directly or through an approved agency, fire losses on property insured in the company, giving the name of the insured, the date of the fire, the amount of loss, the loss paid, the character of the property destroyed or damaged, and the supposed cause of the fire. Provided, however, the state fire marshal may waive the reporting of such losses which are deemed unimportant because of the small amount involved to the end that a saving in time and expense will result. This report must be mailed to the state fire marshal as soon as possible after notice of loss is received by the company. This report must be in addition to, and not in lieu of, any report the company may be required to make by any law of this state to the insurance commissioner.

18-01-05.1. Disclosure of information - Immunity - Confidentiality.

1. The state fire marshal or any law enforcement officer as defined by section 12.1-01-04 may, in writing, require an insurance company at interest to release to the fire marshal or officer any or all relevant information or evidence deemed important which the company may have in its possession, relating to a fire loss when arson is suspected. This requirement is in addition to the information required to be reported by an insurance company under section 18-01-05.
2. Relevant information may include, but is not limited to:
 - a. Pertinent insurance policy information relevant to a fire loss under investigation and any application for such a policy.
 - b. Policy premium payment records which are available.
 - c. History of previous claims made by the insured.
 - d. Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.
3. When an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, the company shall, in writing, notify the state fire marshal, or a law enforcement officer as defined by section 12.1-01-04, and provide any or all material developed from the company's inquiry into the fire loss.
4. Any insurance company providing information to the state fire marshal or a law enforcement officer pursuant to this section has the right to request and receive

relevant information from the state fire marshal or law enforcement officer within a reasonable time not to exceed thirty days.

5. Any insurance company, person acting in its behalf, or authorized agency, that releases information pursuant to this section, whether written or oral, is immune from any liability arising out of the release of such information.
6. For the purposes of this section, "immune" means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this section when actual malice, on the part of the insurance company, person acting in its behalf, or authorized agency, against the insured is not present.
7. The state fire marshal, any law enforcement officer, and any insurance company that receives any information furnished pursuant to this section shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding. The state fire marshal and any law enforcement officer shall testify, if requested, in any litigation in which the insurance company at interest is named as a party.

18-01-06. Fire chiefs and auditors or secretaries of cities and rural fire protection districts must report fires. Within five days after the occurrence of any fire in which property in a city or rural fire protection district has been destroyed or damaged in an amount which exceeds twenty-five dollars, the fire chief of such city or rural fire protection district, if a fire department is maintained therein, or the auditor of the city or the secretary of the rural fire protection district, if a fire department is not maintained therein, shall report the cause, if known, and the origin and circumstances of the fire and the name of the owner and occupant of such property, to the state fire marshal. Such report must show whether such fire was the result of carelessness, accident, or design. The provisions of this section must be complied with, insofar as the same are applicable, if the fire is of unknown origin, regardless of the amount of damage caused thereby.

18-01-07. State fire marshal may direct investigation - Report of investigation - Records in fire marshal's office. An investigation of each fire must be made by the officers required to report the occurrence of fires under section 18-01-06. The state fire marshal shall furnish blanks upon which reports of investigations of fires must be submitted and, when the state fire marshal deems it expedient or necessary, the state fire marshal may supervise and direct any of such investigations. Within one week after the occurrence of a fire, the officer investigating it shall furnish to the state fire marshal a written report containing a statement of the facts relating to the cause and origin of the fire and such other information as the fire marshal may require. The state fire marshal shall keep in the state fire marshal's office a record of all fires occurring in the state together with the facts, circumstances, and statistics in connection therewith and showing the origin of such fires as the same may be determined from the reports filed in the state fire marshal's office.

18-01-08. Compensation of fire chiefs and executive officers of municipalities for reporting to fire marshal. There shall be paid to the chief of the fire department and to the auditor of each city, who does not receive fifty dollars or more annually as compensation for services as such and who is required by this chapter to report fires to the state fire marshal, a fee of one dollar and fifty cents for each fire reported to the satisfaction of the fire marshal. The fire report fee required by this section must be paid only if the fire marshal receives ten or more fire reports annually from a city's fire chief and auditor. Such fees shall be paid at the close of each fiscal year out of funds appropriated for that purpose by the legislative assembly.

18-01-09. Investigation by state fire marshal - Complaint to state's attorney - Records of arson prosecutions. If any investigation made pursuant to the provisions of section 18-01-07 is insufficient in the opinion of the state fire marshal, the state fire marshal shall take or cause to be taken the sworn testimony of all persons having any means of knowledge in relation to the matter under investigation and shall cause the same to be reduced to writing. If the state fire marshal is of the opinion that there is evidence sufficient to charge any person with the crime of arson, the state fire marshal shall cause said person to be arrested and charged with such an

offense. The state fire marshal shall furnish to the state's attorney of the county in which the crime is alleged to have been committed the names of all witnesses obtained by the state fire marshal and a copy of all the pertinent and material testimony taken in the case. The state fire marshal shall keep a record of the proceedings in all prosecutions for arson and of the results in all cases in which a final disposition is made.

18-01-10. Fire marshal and deputies may subpoena witnesses and records - Witness fees - Oaths - Certificates. The state fire marshal and the fire marshal's deputies have the power in any county in the state to summon and compel the attendance of witnesses to testify in relation to any matter which is being investigated pursuant to the provisions of this chapter and to that end may administer an oath or affirmation to any person appearing as a witness before them. They may require the production of any pertinent books, papers, or documents, and a summons to appear before either of such officers must be served in the same manner and has the same effect as a subpoena in the district court. All witnesses shall receive the same compensation as is paid to witnesses in the district court, and such compensation must be paid out of the fire marshal's arson hearing and building condemnation hearing fund upon a voucher signed by the state fire marshal or the deputy fire marshal before whom any witnesses shall have attended, and approved by the office of the budget. At the close of an investigation to which any witnesses were subpoenaed, the officer conducting the investigation shall certify the attendance and mileage of such witnesses, which certificate must be filed in the office of the state fire marshal.

18-01-11. Refusal of witness at fire marshal's investigation to testify, produce records, or obey order - Penalty. Any person summoned to be a witness at any investigation conducted by the state fire marshal or by a deputy fire marshal under the provisions of this chapter is guilty of a class B misdemeanor who:

1. Refuses to be sworn;
2. Refuses to testify;
3. Disobeys any lawful order of the state fire marshal or of any deputy fire marshal relating to an investigation;
4. Fails or refuses to produce any paper, book, or document touching any matter under investigation upon the order of the officer conducting the investigation; or
5. Behaves contemptuously toward such officer.

18-01-12. Testifying falsely at investigation of state fire marshal is perjury.
Repealed by S.L. 1975, ch. 106, § 673.

18-01-13. Interfering with state fire marshal or deputies - Penalty. Any person who interferes in any way with the state fire marshal or a deputy fire marshal in the performance of that officer's duties is guilty of a class A misdemeanor.

18-01-14. Abatement of fire hazards. If the state fire marshal, a deputy fire marshal, or any other officer mentioned in section 18-01-06 finds a building or other structure which is subject to fire because of age or dilapidation, defective or poorly installed electrical wiring or equipment, defective chimneys, gas connections, or apparatus, or for any other reason, and is so situated as to endanger other buildings or property, such officer shall order such buildings to be repaired or torn down or all dangerous conditions therein to be remedied or abated. If the officer finds in a building or upon any premises any combustible or explosive material, rubbish, rags, waste, oils, or gasoline, or any condition which is dangerous to the safety of such building or property, the officer shall order such material removed or such dangerous condition remedied or abated. Any owner, agent, lessee, or occupant of a building or premises upon which a condition described in this section is found and upon whom an order of abatement is served shall comply with such order within the time therein limited.

18-01-15. Abatement of conditions dangerous to persons - Order - Failure to comply - Penalty. If the state fire marshal or a deputy fire marshal finds in any building or upon any premises any condition which is a danger or a menace to the safety of life and limb of the occupants of that building or of any adjacent building, such officer shall issue an order for the immediate removal or correction of the dangerous condition. Any owner, agent, or occupant upon whom an order of abatement issued under this section is served, who fails to comply with the order within the time specified therein, is guilty of a class B misdemeanor, and is guilty of a class A misdemeanor upon a second or subsequent offense.

18-01-16. Order of abatement - To whom directed - Contents - How served - Service by publication. An order of abatement must be in writing and must state concisely the grounds upon which it is based. It must be made against the owner, lessee, or occupant of the building or premises therein described and must be served personally or by registered or certified mail upon the person therein named or that person's agent. If the owner of such premises is not a resident of this state, and if such premises are unoccupied, or if the owner of the premises has no known address, the order of abatement must be served by the publication of the same for three successive weeks in the official newspaper of the county in which the premises described in the order are situated, and the order must be deemed to have been served upon the date of the last publication.

18-01-17. Appeal to state fire marshal from abatement order - Record made by fire marshal. If the owner, lessee, agent, or occupant of any building or premises described in an abatement order is aggrieved by such order and desires a hearing thereon, the person may complain or appeal in writing to the state fire marshal within five days from the service of the order, and the state fire marshal shall investigate said complaint immediately. The state fire marshal shall fix a time, not less than five days nor more than ten days thereafter, and a place when and where the state fire marshal will hear the complaint. The state fire marshal at said hearing shall make a complete record of the proceedings and may affirm, modify, revoke, or vacate the order, and unless the order is revoked, modified, or vacated, it must remain in force and be complied with by such owner, lessee, agent, or occupant within the time fixed in said order or within such time as may be fixed by the state fire marshal at said hearing unless an appeal is taken from the order.

18-01-18. Appeal from abatement order of state fire marshal. If a person is aggrieved by a final order of the state fire marshal ordering an abatement after the hearing provided for in the preceding section, such person may appeal to the district court of the county in which the property is situated and to the supreme court from an adverse decision of the district court. Such appeals must be governed by the provisions of chapter 28-32, except that an appeal to the district court must be taken within ten days after the entry of the final order complained of, and an appeal to the supreme court must be taken within thirty days after notice of entry of the judgment.

18-01-19. Noncompliance with order of abatement - Court proceeding - Title. The state fire marshal, at any time after an abatement order has become final, may file a copy thereof in the office of the clerk of the district court of the county in which the premises affected by the order are situated and thereafter all proceedings with reference thereto are within the jurisdiction of said court. The proceeding in the district court must be entitled in the matter of the order of the state fire marshal concerning the premises therein affected.

18-01-20. Service of order and notice - Contents of notice - Additional parties - Duty of attorney general. There must be served upon the owner, mortgagee, lessee, tenant, occupant, and other persons known to have or claim any interest in the premises described in the order of abatement a copy of the abatement order and a written notice stating:

1. The title of the proceeding.
2. The name of the court in which the proceeding is instituted.
3. That the abatement order has been filed in the district court.

4. That the state fire marshal will apply to the court for a judgment enforcing the terms of the abatement order.
5. That all persons interested in the premises described in the abatement order or in the proceeding in the district court will be required to appear therein and state any objections to the order, within twenty days after the date of service of the notice upon them.

The notice must be subscribed by the attorney general who shall appear for the state fire marshal in each such proceeding. Service must be made in the same manner as a summons is required to be served in a civil action. Whenever it appears that persons in addition to those served are necessary or proper parties to the proceeding, the court may order such persons to be brought in by proper service of the order and notice upon them.

18-01-21. Service of abatement order and notice by publication - Affidavit - Order.

Service of the abatement order and notice described in section 18-01-20 may be made by publication in the same manner as a summons is published in a civil action, upon the order of the district court having jurisdiction of the proceeding. The order for publication must be issued if it appears to the court:

1. By the return of the sheriff of the county in which the premises described in the order are situated, that the sheriff has been unable to make the service required by rule 4(d) of the North Dakota Rules of Civil Procedure upon any person or persons having or claiming an interest in the premises; or
2. By affidavit, that any person having or claiming an interest in the premises described in the order is absent or is believed to be absent from the jurisdiction of the court so that service of the order and notice cannot be made upon that person in the manner provided by rule 4(d) of the North Dakota Rules of Civil Procedure.

18-01-22. Appearance in court proceeding by parties in interest. Any party having or claiming to have an interest in the premises described in the abatement order may appear and state the party's objections to said order in writing within twenty days after the service of the order and notice upon the party. After such period has expired, the court may permit parties to appear for the protection of their respective interests at any time as may be just and proper before the final determination of the proceeding.

18-01-23. Time of hearing in district court - Notice to parties who have appeared.

The proceeding in the district court may be brought on for hearing and determination by the state fire marshal or by any other party thereto at any time after thirty days have elapsed after the completion of service upon all the parties appearing to be interested therein. In the order setting the time for hearing, the court shall order such notice of the time and place of the hearing to be given to all parties to such proceeding as it shall deem proper. It is not necessary to give notice of such hearing to any person upon whom service of the order and notice described in section 18-01-20 has been made if such person has not appeared in said proceeding.

18-01-24. Hearing in district court. At the time set for the hearing in the district court, or as soon thereafter as practicable, the court shall hear and determine the issues raised by the abatement order and the objections thereto and shall make its findings of fact and conclusions of law therein as in other civil actions and shall order judgment to be entered accordingly.

18-01-25. Conclusiveness of abatement order or of judgment on appeal therefrom.

The order of abatement made by the state fire marshal, if no appeal is taken therefrom, is conclusive upon all parties to whom notice of the order was given as provided in section 18-01-16. If an appeal was taken from such order, the judgment of the court on appeal is conclusive upon all parties thereto. The order or judgment, as the case may be, is prima facie valid as to all other parties.

18-01-26. Judgment of district court and contents. If the court finds that the order of the state fire marshal is just and proper, the judgment must provide for the enforcement thereof within such time and in such manner as must be therein designated. By said judgment or by an appropriate order based thereon, the court may direct the sheriff or the state fire marshal to cause such judgment to be enforced. In the event that any building or other structure is disposed of in pursuance of such order so that there is salvage therefrom, the court shall make an appropriate order for the protection of the interests of the parties to the proceeding.

18-01-27. Costs and disbursements - Enforcing order - Lien of costs - Payment of sheriff's fees. Costs and disbursements may be taxed, allowed, and entered in the judgment of the court in a proceeding to enforce an abatement order made by the state fire marshal in the same manner as in other civil actions. If the sheriff or state fire marshal has incurred expenses in the enforcement of any such order, the expenses must be reported to the court and the court may allow and enter them as a part of the judgment. Any costs and disbursements so allowed and entered in the judgment are a lien against the premises affected by the abatement order and are enforceable in the same manner as other judgment liens. The state fire marshal shall reimburse the sheriff for the sheriff's disbursements and fees in said proceeding.

18-01-28. Records in fire marshal department open to inspection - Exception. All records in the state fire marshal department must be public, except that the state fire marshal may withhold from the public any testimony, correspondence, or other matter secured in any investigation made under the provisions of this chapter.

18-01-29. Biennial report. The state fire marshal may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

18-01-30. State's attorneys to assist fire marshal. The state's attorney of any county, upon the request of the state fire marshal or the state fire marshal's deputies or assistants, shall assist such officers upon the investigation of any fire which, in their opinion, is of suspicious origin.

18-01-31. Compensation of officers performing services for fire marshal department. All officers not employees of the state fire marshal department who perform any services at the request of the state fire marshal or of a deputy fire marshal shall receive the same fees as such officers are allowed for like services in proceedings in the district court.

18-01-32. Violation of duty by officers - Penalty. Any officer referred to in this chapter who neglects to comply with any of the requirements of this chapter must be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each neglect or violation.

18-01-33. State fire marshal may adopt rules for explosives - Penalty. The state fire marshal may adopt safety rules for the storage, sale, and use of combustibles and explosives, not otherwise provided by law. Any person who willfully refuses to comply with the safety rules adopted by the state fire marshal is guilty of a class B misdemeanor. Rules adopted by the state fire marshal may not be more restrictive than those promulgated by the national fire codes of the national fire protection association and do not apply to the transportation of explosives and dangerous articles regulated by the interstate commerce commission. The state fire marshal may make reasonable provision for the application or nonapplication of all or any portion of the national fire codes.

18-01-34. Disclosure of information concerning toxic or hazardous substances - List to state fire marshal and local fire departments - Exceptions - Availability of information restricted - Penalty. Every person who produces, either as a direct or indirect result of conducting the production of goods or services, routinely stores, or sells a hazardous substance in this state shall submit to the state fire marshal and to the fire department in the fire district in which is located a facility owned and operated by the person, a list of hazardous substances that are consistently generated by, used by, stored at, or transported from the facility. As used in this section "hazardous substance" means a chemical or substance or mixture of

chemicals and substances which is defined as a hazardous substance under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [Pub. L. 96-510], as amended, and meets or exceeds the listed reportable quantity for that substance. As used in this section "facility" means any building or other structure or place where hazardous substances are used, manufactured, or stored, and includes areas where hazardous substances are handled, mixed, processed, packaged, or repackaged. The information must be provided in sufficient specificity, in accordance with rules adopted by the state fire marshal, that the state fire marshal and the local fire departments are informed of the nature of the hazardous substances, the hazards presented by the hazardous substances, and the appropriate response in dealing with an emergency involving the hazardous substances. The state fire marshal shall by rule except persons from the requirements of this section when the persons do not generate, use, store, or transport sufficient amounts of hazardous substances to create a significant threat to public safety. Persons who have copies of emergency response plans meeting the requirements of the federal Resource Conservation and Recovery Act of 1976 on file with the state fire marshal and the local fire district must be deemed to be in compliance with the requirements of this section. The state fire marshal and local fire departments receiving information under this section may make the information received available only to other governmental emergency response departments. Any person who violates this section is guilty of a class B misdemeanor.